

B-12

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 8, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Oahu

Forfeiture of General Lease No. S-3856, Hemaloto Alatini and  
Leona Alatini, husband and wife, Lessee, Waimanalo,  
Koolaupoko, Oahu, Tax Map Key:4-1-024:023.

PURPOSE:

Forfeiture of General Lease No. S-3856, Hemaloto Alatini and  
Leona Alatini, Lessee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waimanalo situated at Koolaupoko,  
Oahu identified by Tax Map Key: 4-1-024:023, as shown on the  
attached map labeled Exhibit "A".

AREA:

9.470 acres, more or less.

TRUST LAND STATUS:

Section 5(B) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO X

CHARACTER OF USE:

Diversified Agriculture, which shall mean the cultivation of  
truck, orchard, flower and nursery crops and shall not include or  
embrace the cultivation of grasses or forage crops except as  
"cover crops" and then only for the short periods between crops  
consistent with good diversified crop practices; and provided  
further, that nothing in this paragraph shall be construed as  
intending to prohibit the Lessee and his employees from

maintaining a home garden and keeping chickens or other food and/or pleasure animals (excepting swine) for his own use and not for sale to others.

TERM OF LEASE:

55 years, commencing on August 10, 1964 and expiring on August 9, 2019.

ANNUAL RENTAL:

\$ 9,200.00 in annual payments.

REMARKS:

In response to a complaint received by this office, staff inspected the property on April 4, 2006 and discovered that it was used for a tree trimming and landscaping company operation as shown by the enclosed photos labeled Exhibits "B", and "C". There were a total of 12 tree service trucks and equipment. There were tree trimming boom trucks, hauling trucks and tree cutting equipment with the name Nilasoni Landscape, Inc on the doors of the trucks as shown in the attached photos. The lot was clearly used as a baseyard for Nilasoni Landscape, Inc.

The lot was also littered with piles of tree cuttings, tree trunk sections, derelict trucks and other equipment and piles of concrete rubble as shown by the attached photos labeled Exhibits "D", "E", and "F". The lot was also used for raising swine as shown of Exhibit "G".

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-3856, Hemaloto Alatini and Leona Alatini, Lessee, was served a Notice of Default, attached as Exhibit "H", by certified mail, dated April 26, 2006, and the defaults are summarized as follows:

1. Failure to provide a profit and loss statement pursuant to Condition 5 of the Extension of General Lease 3856, dated November 16, 1988.
2. Failure to obtain prior approval from the Board for an assignment and sublease which is a violation of Condition 21 of General Lease 3856, "Assignment, etc".

3. Operating a base yard for tree trimming and landscaping company and keeping swine on the property which is a violation of Condition 18 of General Lease 3856, "Character of Use".
4. Failure to keep the property in a clean and sanitary manner which is a violation of Condition 23 of General Lease 3856, "Sanitation etc.".

Said Notice of Default, accepted by the Lessee on April 28, 2006, offered the Lessee a ninety-day cure period to correct the default. This cure period expired on July 28, 2006. As of September 8, 2006, this breach has not been cured.

The current status of lease compliance items is as follows:

RENT: The Lessee is current with all rent obligations.

INSURANCE: The Lessee has posted the required liability insurance policy.

PERFORMANCE BOND:

The Lessee had posted the required performance bond secured from First Insurance Company of Hawaii, (First Insurance), with Bond No. HS 52-58641. On January 31, 2006, it was renewed for another year.

CONSERVATION PLAN:

The Lessee has not submitted an up-dated conservation plan.

At a meeting with Mrs. Alatini on June 7, 2006, staff clearly explained that she had to remove Nilasoni Landscape Inc. from the lot. This tree trimming and landscaping company could not use the leasehold for a base yard. They clearly had to remove all of their trucks and equipment from the lot before July 28, 2006. Staff explained to Mrs. Alatini that she had to clean up the site. She had to remove all of the derelict equipment and vehicles, all of the tree stumps, all of the tree cuttings and the concrete rubble. Staff also explained that she could not raise swine on the leasehold. Staff clearly explained that Mr. and Mrs. Alatini needed to cure all of the deficiencies cited in the Notice of Default before July 28, 2006.

On July 28, 2006, the 90 day period for solving the problems ended and staff returned to the site on August 15, 2006 for another inspection. Staff found that except for removing some of the swine, nothing had been done to resolve the Notice of Default issued to Mr. and Mrs. Alatini on April 28, 2006.

Twelve trucks and equipment from Nilasoni Landscape, Inc. were parked there shown on Exhibit "1". The lot was littered with the same piles of tree stumps, tree cuttings, derelict equipment, and concrete rubble shown as Exhibit "2". Also, swine were still on the site as shown on Exhibit "3".

Based on our recent inspection of August 15, 2006, where staff found that almost nothing was done to cure the lease default, staff respectfully requests that General lease No. S-3856 be terminated effective September 8, 2006.

Staff requests that all of the vehicles and equipment used by the lessee for diversified agriculture be allowed to remain on the lot. All equipment and vehicles not used for diversified agriculture shall be removed from the lot at the Lessee's expense. Staff also requests that the lot be cleaned at the Lessee's expense by removing the following:

1. All of the trucks and equipment owned or operated by Landscape, Inc. and any other tree trimming equipment not used in conducting diversified agriculture on the leasehold.
2. All unused, and abandoned tree trimming equipment and all other abandoned vehicles and equipment.
3. All piles of cut tree stumps, tree branches, rubbish piles, discarded lumber, wooden pallets, and discarded equipment.
4. All piles of excavated concrete blocks and discarded construction material.
5. All swine and swine pens.

RECOMMENDATION: That the Board:

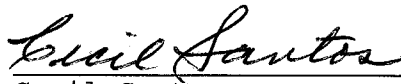
1. Authorize the cancellation of General Lease No. S-3856 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-3856 as liquidated damages;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of September 8, 2006, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated



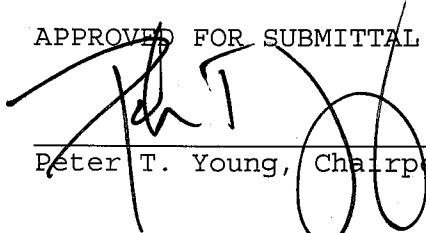
in the lease and all obligations of the Lessee cited in the Condition No. 4 below in this Recommendation Section shall survive termination and shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law;

4. Require the lessees to remove from the leasehold, at their own expense, all of the following:
  1. All of the trucks and equipment owned or operated by Nilasoni Landscape, Inc. and any other tree trimming equipment not used in conducting diversified agriculture on the leasehold.
  2. All unused, and abandoned tree trimming equipment and all other abandoned vehicles and equipment.
  3. All piles of cut tree stumps, tree branches, discarded lumber, discarded wooden pallets, discarded equipment, discarded material, and rubbish.
  4. All piles of excavated concrete blocks and discarded construction material.
  5. All swine and swine pens.
5. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-3856 and enforce Condition No. 4 stated above in the Recommendation Section, and to pursue all other rights and remedies as appropriate.

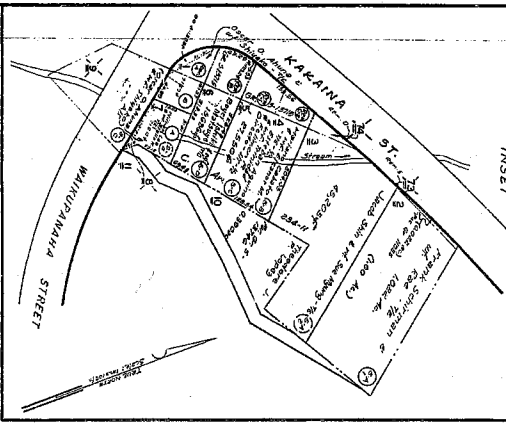
Respectfully Submitted,

  
Cecil Santos  
Oahu District Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson

WAIMANALO FARM LOTS, WAIMANALO, KOOLAUPOKO, OAHU



*Parcel Dropped: 75 2, 5, 8  
75,*

DEPARTMENT OF THE TAX COMMISSIONER			
TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
FIRST	SEC.	DIVISION	PLAT
4	1	24	
CONTAINING			
SEAL: 1 IN. x 1/2 AC. NOTED			
PARCELS			

**EXHIBIT "A"**



EXHIBIT "B"<sup>77</sup>

4 10:25 AM



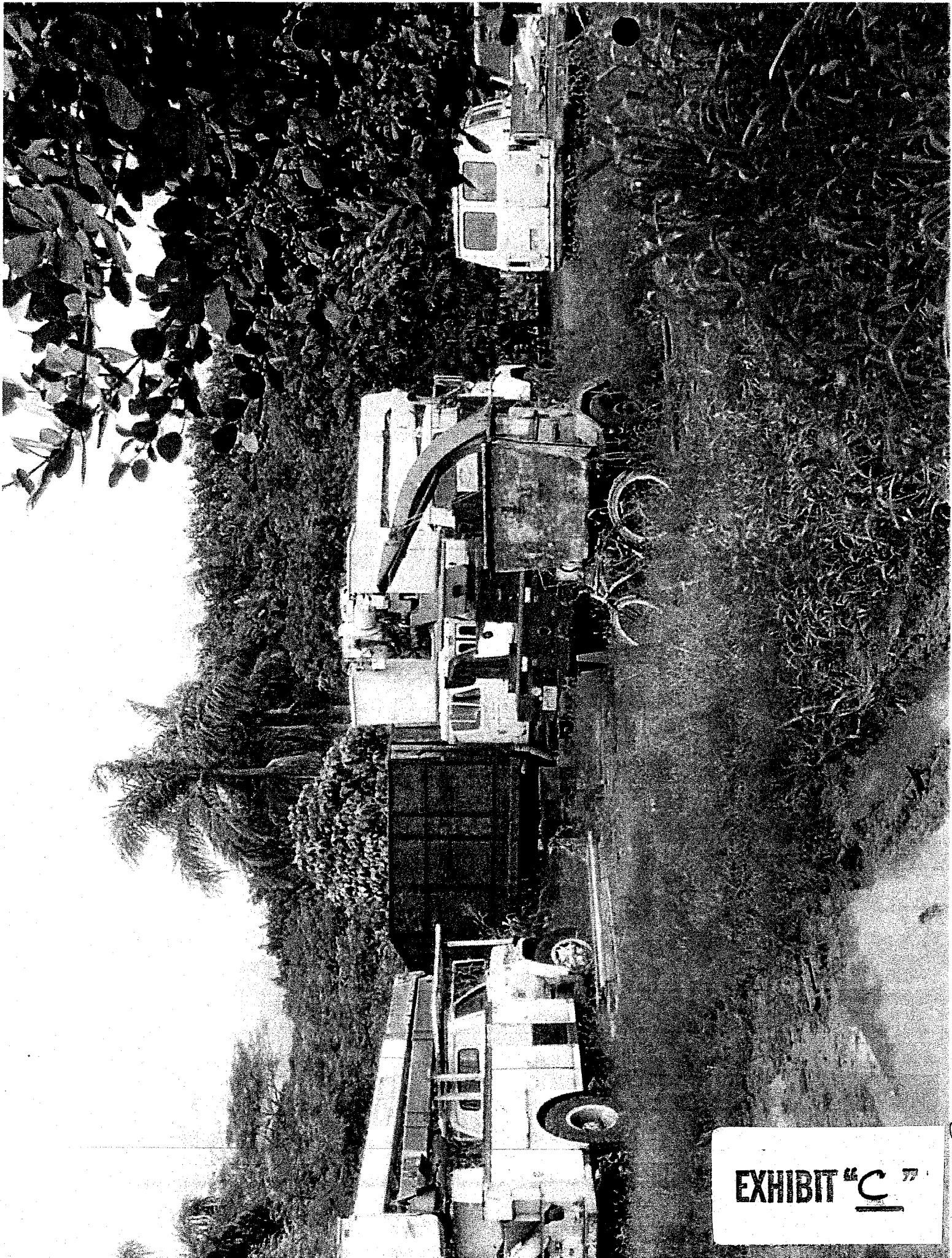


EXHIBIT "C"





EXHIBIT "D"





EXHIBIT "E"





4 10 29 AM

EXHIBIT "E" 77

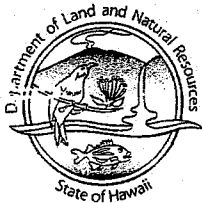


4 103348

EXHIBIT "G"



LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR

DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING

FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

April 26, 2006

CERTIFIED MAIL:

7003 3110 0005 7373 5128

Hemaloto Alatini  
Leona Alatini  
1680 Noelani Street  
Pearl City, Hawaii 96782

Dear Mr. and Mrs. Alatini:

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of January 11, 1980, and the breach provision contained in General Lease S-3856, you are hereby served a Notice of Default on said lease for failure to do the following:

1. Item 5, page 4 of Extension of General lease No. S-3856 states the following: "The Lessee shall derive its principal income from the diversified agricultural activities conducted on the premises, and shall furnish the Lessor within sixty (60) days following the end of each lease year with a Certified Statement prepared by a Certified Public Accountant showing the profits or losses realized from farming activities conducted on the premises".

No annual profit and loss statement has been provided to Lessor for the past five years.

You are hereby given ninety (90) days from the date of receipt of this letter to cure the above-described breach.

2. Item 21, Assignments, etc., page 9 of General Lease No S-3856 states the following: "That the Lessee shall not transfer or assign any right, privilege or authority herein given or in any manner transfer or assign this lease for the whole or any part of the term hereof, except by way of devise, bequest or intestate succession; provided, that with the prior

**EXHIBIT "H"**

written consent of the Lessor, the assignment and transfer of this lease or unit thereof may be made where any one of the following conditions is applicable: (1) it contains the personal residence of the Lessee, (2) the Lessee becomes mentally or physically disabled, or (3) extreme economic hardship is demonstrated to the satisfaction of the Lessor; provided, however, that the Lessor may adopt or modify or waive any part or all of restriction to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Small Business Administration, Farmers Home Administration, and their respective successors and assigns".

It appears the property has been assigned or subleased without the prior written consent of the Lessor. All of the Nilasoni Landscape Inc. trucks must be removed from the leased premises.

You are hereby given ninety (90) days from the date of receipt of this letter to cure the above-described breach.

3. Item 18, Character of Use provision, page 8, and page 21, General Lease No. S-3856 states the following: "Character of use. That the lessee shall use the demised premises for the specific agricultural use for which this lease was sold, as such use is hereinafter defined in Paragraph 42 (Definitions) of this lease, provided, further, that nothing in this paragraph shall be construed as intending to prohibit the lessee and his employees from maintaining a home garden and keeping chickens or other food and/or pleasure animals (excepting swine) for his own use and not for sale to others."

Item 42 (a) states the following: "Agriculture, diversified" shall mean the cultivation of truck, orchard, flower and nursery crops and shall not include or embrace the cultivation of grasses or forage crops except as "cover crops" and then only for the short periods between crops consistent with good diversified crop practices"

Nilasoni Landscape, Inc. is using the premises for the operation of a baseyard. The property must not be used as a baseyard, in violation of the Character of Use provision.

The premises are used for keeping swine. You may not keep swine on the leased premises.

You are hereby given ninety (90) days from the date of receipt of this letter to cure the above-described breach.

4. Item 23, page 10, General Lease No. S-3856, states the following: "Sanitation, etc. That the Lessee shall, during the whole of the term of this lease, maintain the demised premises in a sanitary and orderly condition satisfactory to the Lessor and in conformity with the Public Health Regulations of the Department of Health and with all applicable laws, ordinances, rules and regulations of the federal government, State and local governments, with special reference to but not limited to the regulations of the State Department of Agriculture".

The premises are being used for disposing concrete rubble, cut tree branches, and tree trunks. This material must be removed from the leased premises and properly disposed of.

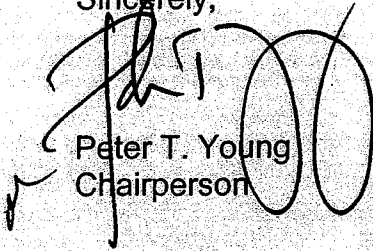
You are hereby given ninety (90) days from the date of receipt of this letter to cure the above-described breach.

Your failure to act on the above matter will result in the following:

1. Cancellation of General Lease S-3856.
2. Retention of all sums heretofore paid under General Lease S-3856 as liquidated damages.
3. Termination of all your rights and obligations under General Lease No. S-3856.
4. Initiation of legal action to collect the delinquent lease rental owing the State of Hawaii under General Lease S-3856.
5. Forfeiture of your lease performance bond.

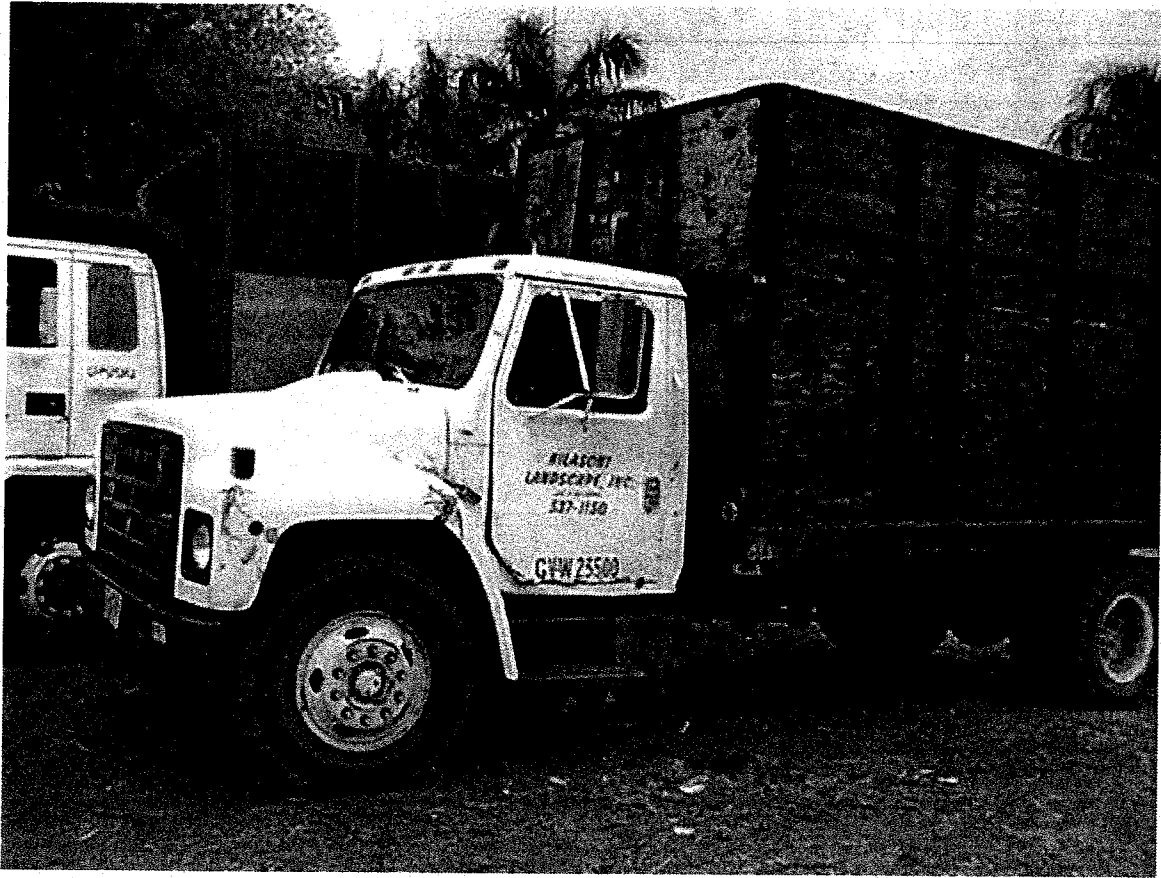
We therefore urge your fullest cooperation. Should you have any questions, please contact our Oahu District Land Branch at (808) 587-0433.

Sincerely,

A handwritten signature in black ink, appearing to be "Peter T. Young", written over a large, stylized circular mark.

Peter T. Young  
Chairperson

c: Land Board Member  
Central Office  
Fiscal Office  
Bond Holder

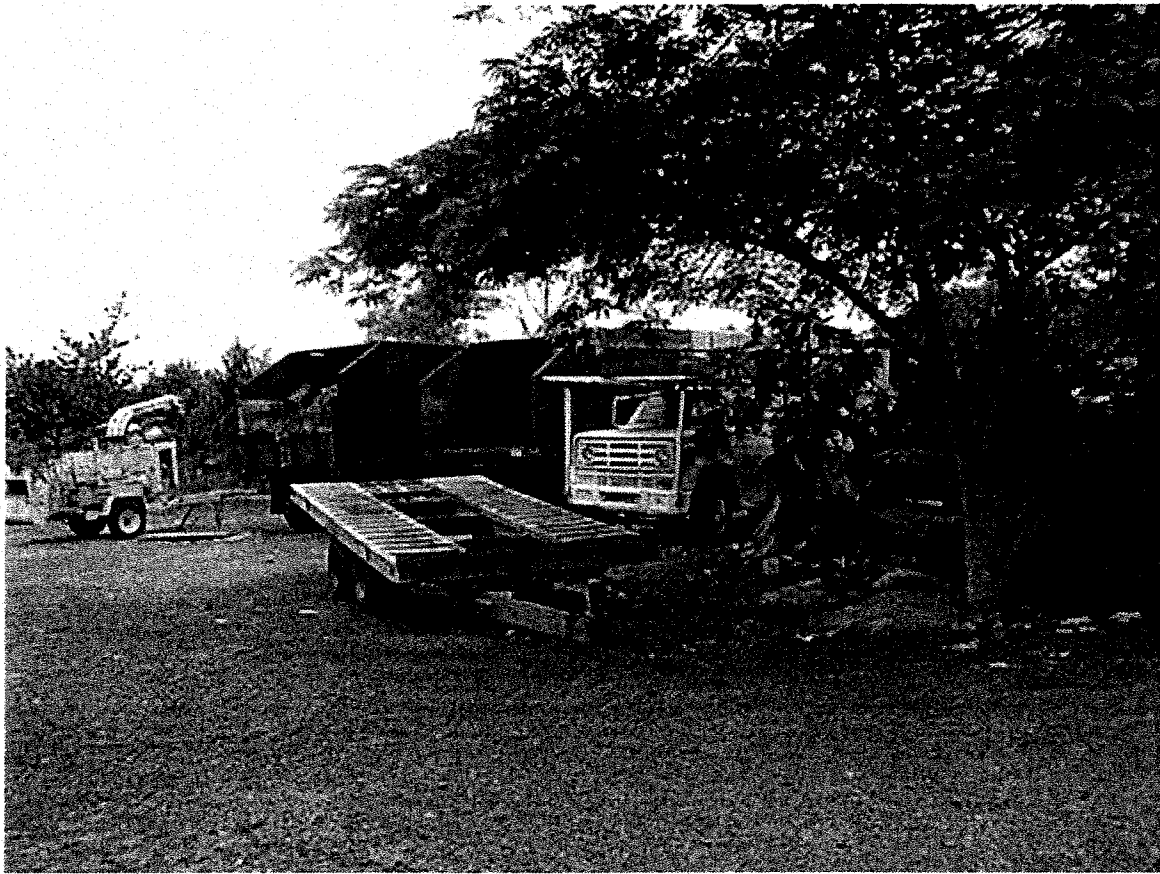


8/15/06 3:00 pm



8/15/06 3:00 pm

EXHIBIT " 1 "



8/15/06 3:00 pm

EXHIBIT "1"





8/15/06 3:00 pm

EXHIBIT " 1 "





8/15/06 3:00 pm

EXHIBIT "2"



8/15/06 3:00 pm

EXHIBIT <sup>44</sup>2<sup>77</sup>



8/15/06 3:00 pm

EXHIBIT "2"



8/15/06 3:00 pm

EXHIBIT "2"



8/15/06 3:00 pm

EXHIBIT <sup>44</sup> 3 <sup>7</sup>